ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment to the Commission's Rules	)	
Regarding a Plan for Sharing	)	WT Docket No. 95-157
the Costs of Microwave Relocation	)	RM-8643

REPLY COMMENTS OF TENNECO ENERGY

Tenneco Energy ("Tenneco"), by its attorneys, hereby replies to the comments of other parties filed in the above-captioned proceeding.[1/] Tenneco continues to support one of the Commission's basic goals in this proceeding -- ensuring adequate reimbursement to the initial PCS entities that pay microwave relocation costs by subsequent PCS entities that would benefit from the relocation. However, Tenneco strongly opposes those portions of the Notice of Proposed Rule Making ("Notice")[2/] that would radically rewrite the Commission's current rules for microwave relocation, resulting in a wholesale abandonment of the obligations that accompanied the reallocation of the 2 GHz spectrum and its subsequent reassignment pursuant to public auction. Overall, the comments filed in this proceeding fail to support the sweeping changes advocated by some PCS entities and their trade associations.

1/ Tenneco is a member of the American Petroleum Institute ("API") and the American Gas Association ("AGA") and generally supports their comments in this proceeding.

2/ Notice of Proposed Rule Making, WT Docket No. 95-426, RM-8643, FCC 95-426, 60 Fed. Reg. 55529 (November 1, 1995).

As the voluntary negotiation period is now well underway, the Commission must remain cognizant of its responsibility to remain even-handed in the treatment of the parties. Clearly, the mere issuance of the Notice in this proceeding has affected the negotiations. First, it has created incentives for current and future PCS entities to wait-and-see if a better deal can be obtained by altering the original FCC rules governing the transition -- an unintended negative effect from a public policy perspective.[3/] Second, the Notice has been understood by microwave incumbents as a "bow shot" by the FCC at the behest of a politically powerful PCS industry -- forcing many incumbents to lower their expectations regarding their relocation plans, regardless of their initial reasonableness. Third, the harshness of some of the proposals in the Notice has demonstrated the Commission's commitment to all participants in spectrum auctions, past and future, who may desire expeditious band-clearing. The Commission has achieved its unstated goals in this regard, and from this point forward, the thrust of this proceeding should be the adoption of appropriate cost-sharing/reimbursement rules to facilitate the rapid and complete clearing of the 2 GHz band.

Certainly, if there are some relocation-plan "bad actors" within the incumbent microwave community, there are, or likely will be, just as many "bad actors" among the PCS entities

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3/ In fact, several large PCS entities have responded with disinterest to Tenneco's initial invitation to commence negotiations in 1996.

over time. However, the record in this proceeding does not support a conclusion that "bad actor" problems among incumbents are either significant or widespread. Accordingly, a more appropriate and even-handed response to any real "bad actor" problems brought to the attention of the Commission would be the adoption of formal, mandatory dispute resolution procedures applicable to these situations, rather than a wholesale revision of the existing relocation rules during the pendency of negotiations between the parties operating under those rules.

To maintain even-handedness, the proposals in the Notice to simplify the administration of the cost-sharing rules should be moderated by the impact these various proposals will have on the relocation agreements now under negotiation by initial PCS entities and incumbent microwave licensees. Thus, the Commission should be guided by the unanimous lack of support among incumbent licensees for proposed changes in the basic definition of interference for cost-sharing rules, and should abandon the proposed arbitrary per-link caps on the amount eligible for reimbursement.

I. THE COMMENTS DO NOT SUPPORT REDUCED INTERFERENCE PROTECTION FOR INCUMBENTS

One of the most troublesome proposals in the Notice would make incumbent microwave licensees secondary in the 2 GHz band as of a date certain. The bias inherent in this proposal is underscored by the one-sided support for it from the PCS community. Essentially, the PCS community recognizes that this

proposal would create an escape clause in the Commission's rules, permitting permanent avoidance of band-clearing responsibilities where possible by waiting until the date certain arrives when microwave incumbents lose their interference protection. Tenneco is not alone in its opposition to this proposal. Nearly all the commenting parties within the incumbent microwave community and other commenters agree that this would be unfair and would result in forced relocations to another band without compensation.[4/] The payment of full and complete relocation costs by PCS licensees, whether they deploy their systems now or later, is the only equitable situation. Otherwise, microwave incumbents will be forced to bear the costs of their own displacement, resulting in unanticipated and unwarranted windfalls to PCS licensees.

As interference was the original driving force behind the Commission's 2 GHz band-clearing initiative, it should remain the guiding principle for crafting appropriate cost-sharing rules. The fact that the largest PCS entities have agreed privately to simplify their arrangements regarding cost-sharing obligations by reliance on a "proximity threshold" does not justify wholesale departure from the carefully drawn interference standards in Telecommunications Industry Association ("TIA") Bulletin 10F. Bulletin 10F should continue to be the standard for measuring PCS-to-microwave interference. Moreover, the

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4/ See e.g., Comments of American Public Power at 5; Comments of American Petroleum Institute at 19; Comments of Association of American Railroads at 8; Comments of Association of Public Safety Communications Officials - International at 11.

simple fact that interference may occur on a co-channel or adjacent-channel basis should require that both types of interference be factors in the cost-sharing or reimbursement rights. Tenneco agrees with TIA and others, that adjacent-channel interference protection should remain a primary factor in determining cost-sharing requirements and obligations.[5/] The exclusion of some adjacent-channel interference from the cost-sharing rules invites a reluctance, or potentially a complete unwillingness, by PCS entities to address these problems in the initial relocation agreements with incumbent microwave licensees.[6/]

II. THE COMMENTS DO NOT SUPPORT ADOPTION OF ARBITRARY PER-LINK CAPS IN THE REIMBURSEMENT RULES

Notwithstanding the goal of providing administrative ease, the spirit of the reimbursement rules as a general matter should mirror the spirit of the relocation plan rules. Initial PCS licensees that pay relocation costs should be made whole by other PCS licensees except for their proportionate share of the costs and any portion they may voluntarily choose to pay to an incumbent beyond the scope of the actual relocation costs. For this reason, Tenneco continues to oppose the per-link cap in the proposed cost-sharing rules as arbitrary and capricious. This cap on the amount of reimbursement recoverable by initial PCS

5/ See Comments of TIA at 5; Comments of Alcatel Network Systems at 2; and Comments of American Petroleum Institute at 9.

6/ See Comments of TIA at 5.

licensees that pay relocation costs would place severe downward pressure on the amount of compensation they likely would offer to incumbent microwave licensees -- without regard to the actual costs involved in relocating the incumbent to comparable facilities in another band.

The comments in this proceeding reveal a complete lack of justification for the proposed per-link cap in the reimbursement rules, other than the naked assertion that such a cap would be administratively expedient. There simply is no evidence that the proposed cap is based on reliable data, or that it would ensure adequate compensation to incumbent microwave licensees, or that it is necessary as a protection against over-assessments to subsequent PCS entrants in the reimbursement process. Indeed, the PCS community has questioned the appropriateness of the per-link cap on reimbursement costs. For example, AT&T Wireless ("AT&T") and GTE Service Corporation ("GTE") recommend that PCS entities be eligible for cost sharing reimbursement for any costs incurred on behalf of an incumbent microwave licensee, provided that adequate justification is made for costs in excess of $250,000 per link. In the absence of a clear need for a rule providing a per-link cap, and a rational basis for the precise amount of the cap, the Commission should refrain from adopting the proposed cap.

III. CONCLUSION

For these reasons, and the reasons set forth in Tenneco's comments filed on November 30, 1995 in this proceeding, Tenneco urges the Commission to refrain from adopting policies and rules for the relocation plan that will promote inadequate, piecemeal relocation arrangements with PCS licensees. Tenneco requests that the Commission to remain impartial in the negotiations while promoting cooperation among PCS licensees as they fulfill their band-clearing obligations. Specifically, Tenneco recommends that the Commission: (1) abandon the proposals in the Notice that would radically change the current rules governing the relocation plan, and instead focus exclusively on the adoption of appropriate cost-sharing rules; (2) abandon the proposed date certain on which incumbent microwave licensees will lose their interference protection in the 2 GHz band and maintain the current interference standards; (3) adopt reimbursement rules that are triggered by both co-channel and adjacent-channel

interference; and (4) adopt reimbursement rules without arbitrary caps based on hypothetical averages.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Bridget Y. Monroe, a secretary with the law firm of Verner, Liipfert, Bernhard, McPherson and Hand, hereby certify that on this 16th day of January, 1996, a copy of Reply Comments of Tenneco Energy was mailed, first class postage prepaid to the following:

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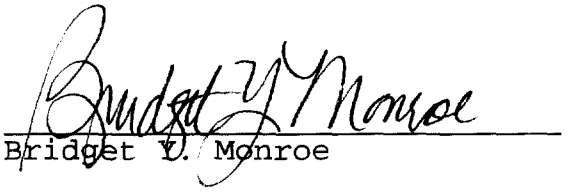

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